

Court of Appeals, State of Michigan

ORDER

Donna A Turscan v Health Care & Retirement Corp of America

Docket No. 261980

LC No. 03-325934-NH

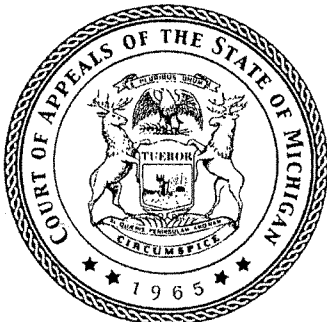
Karen M. Fort Hood
Presiding Judge

Helene N. White

Peter D. O'Connell
Judges

By order of August 28, 2007, the motion for reconsideration of the opinions issued by this Court on January 11, 2007, was held in abeyance pending the Supreme Court's decision in *Mullins v St Joseph Mercy Hosp*, 269 Mich App 801 (2006), lv gtd 477 Mich 1066(2007). On order of the Court, *Mullins* having been decided by the Supreme Court on November 28, 2007, ____ Mich ____ (Docket No. 131879, 2007), the motion for reconsideration is again considered and GRANTED. We VACATE this Court's prior opinions issued on January 11, 2007, we VACATE the Wayne Circuit Court order granting defendants' motion for summary disposition, and we REMAND this case to the Wayne Circuit Court for further proceedings not inconsistent with this order and the order in *Mullins*.

We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 10 2008

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

DONNA A. TURSCAN, Personal Representative
of the Estate of CLARA HART, Deceased,

UNPUBLISHED
January 11, 2007

Plaintiff-Appellant,

v

No. 261980
LC No. 03-325934-NH

HEALTH CARE & RETIREMENT
CORPORATION OF AMERICA, a/k/a HCR
MANOR CARE, d/b/a HEARTLAND HEALTH
CARE CENTER—DEARBORN HEIGHTS, HCR
PHYSICIAN SERVICES, d/b/a HCR
PHYSICIAN MANAGEMENT SERVICES, INC.,
and ISHA PATHAK, M.D., d/b/a MIDWEST
PHYSICIAN SERVICES,

Defendants-Appellees,

and

MICHAEL SANDBORN, M.D., and R. STEVEN
GEIRINGER,

Defendants.

Before: Fort Hood, P.J., and White and O’Connell, JJ.

PER CURIAM.

In this wrongful death medical malpractice action, plaintiff Donna A. Turscan, the personal representative of decedent Clara Hart’s estate, appeals as of right from an order granting summary disposition pursuant to MCR 2.116(C)(7) to defendants Health Care & Retirement Corporation of America, a/k/a HCR Manor Care, d/b/a Heartland Health Care Center—Dearborn Heights, HCR Physician Services, d/b/a HCR Physician Management Services, Inc., and Isha Pathak, M.D., d/b/a Midwest Physician Services, on the basis that plaintiff’s complaint was time-barred. We affirm.

The issues presented in this case are controlled by decisions of this Court resolving various conflicts. In *Mullins v St Joseph Mercy Hosp*, 271 Mich App 503; 722 NW2d 666 (2006), the conflict panel determined that *Ousley v McLaren*, 264 Mich App 486; 691 NW2d 817 (2004), correctly determined that *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004),

applies retroactively to cases such as the instant case. In *Ward v Siano*, __ Mich App __; __ NW2d __ (2006), published opinion of the Court of Appeals, issued 11/14/06 (Docket No. 265599), opinion amended by order issued 11/21/06, the conflict panel determined that equitable considerations do not operate to suspend the retroactive application of *Waltz, supra*, to cases such as the instant case. And, in *Boodt v Borgess Medical Ctr*, __ Mich App __; __ NW2d __ (2006), published opinion of the Court of Appeals, issued 10/31/06, conflict panel not convened, order issued 11/13/06 (Docket No. 266217), the Court determined that *McClean v McElhaney*, 269 Mich App 196; 711 NW2d 775 (2005), is controlling because decided before *Verbrugghe v Select Specialty Hosp*, 270 Mich App 383; 715 NW2d 72 (2006)¹, and the appointment of a successor personal representative does not result in the beginning of a new two-year wrongful death saving period. On the basis of these authorities, we affirm.

/s/ Karen M. Fort Hood

/s/ Helene N. White

¹ Application for leave to appeal held in abeyance, __ Mich __; 722 NW2d 885 (2006).